Supreme Court, U.S.
FILED
MAR 9 1998
OFFICE OF THE CLERK

No. 97-1117

In the Supreme Court of the United States

OCTOBER TERM, 1997

PAUL G. SHULTZ, PETITIONER

v.

DEPARTMENT OF THE ARMY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

Revised Statutes 2477 (1875), a former provision of federal law commonly known as R.S. 2477, previously codified at 43 U.S.C. 932 (1970), and repealed in 1976 subject to a savings provision in the Federal Land Policy Management Act of 1976, 43 U.S.C. 1701, granted "[t]he right of way for construction of highways over public land, not reserved for public uses." Under R.S. 2477, lands on which highways had been constructed before their segregation from the public domain are deemed to be encumbered by public highway rights-of-way. Petitioner, who owns property near Fort Wainwright, a United States Army installation in Alaska, sued under the Quiet Title Act (QTA), 28 U.S.C. 2409a, to quiet title in public highway rights-of-way through Fort Wainwright along some of the current roads constructed by the Army. This case presents the following questions:

1. Whether the QTA authorizes a suit against the United States by a private party to quiet title in alleged public highway rights-of-way.

2. Whether petitioner failed to meet his burden of proving the existence of a continuous route of travel between Fairbanks and petitioner's property during the period in which the lands were in the public domain, and thereby failed to establish the existence of a public highway right-of-way under R.S. 2477 between Fairbanks and petitioner's property.

3. Whether petitioner's claim is barred by the QTA's statute of limitations.

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OPINIONS BELOW

The opinion of the court of appeals on the government's petition for rehearing (Pet. App. 1a-4a), from which review is sought, is reported at 96 F.3d 1222. The initial decision of the court of appeals (Pet. App. 5a-32a), which was withdrawn on the government's petition for rehearing, is reported at 10 F.3d 649. The opinion of the district court (Pet. App. 35a-48a) is unreported. A previous decision of the court of appeals (Pet. App. 49a-60a) is reported at 986 F.2d 1157.

JURISDICTION

The initial judgment of the court of appeals was entered on November 30, 1993. The judgment of the court of appeals rendered on the government's petition for rehearing was entered on September 20, 1996. Petitioner filed a petition for rehearing 46 days later,

on November 5, 1996, on an ancillary issue raised in a separate but consolidated appeal. On October 8, 1997, the court of appeals granted petitioner's petition for rehearing and disposed of it by dismissing the ancillary appeal for lack of appellate jurisdiction. Pet. App. 63a. The petition for a writ of certiorari was filed on January 6, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). Because of the timing of petitioner's petition for rehearing, there is a question of this Court's jurisdiction. See Sup. Ct. R. 13.3.[1]

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[1] Subsequent to the entry of judgment in the district court, the United States filed a notice to tax costs; petitioner opposed that request with respect to the cost of the physical preparation of maps. On January 28, 1992, the clerk of the district court awarded costs in the amount of $11,627.75, including an amount for reproduction of maps. On January 30, 1992, petitioner filed a motion to retax costs. On February 10, 1992, petitioner filed a timely notice of appeal of the district court's judgment on the merits, which appeal was assigned Ninth Circuit No. 92-35197. On April 20, 1992, a magistrate judge issued a minute order denying the motion to retax costs "without prejudice as this case is now on appeal." C.A. E.R. Tabs DS, 116, 126. Petitioner filed his opening brief on the merits on May 27, 1992, and included an argument that the award of costs to the United States for maps was improper. On May 19, 1992, petitioner filed a notice of appeal from the magistrate judge's order denying his motion to retax costs. That appeal was assigned Ninth Circuit No. 92-35580.

Petitioner requested that the court of appeals treat the two appeals as consolidated, and the court granted that request on August 25, 1992. The court of appeals subsequently treated both appeals as consolidated; its initial decision and its decision on the government's petition for rehearing bear both docket numbers. See Pet. App. 1a, 5a. The court's initial decision did not address petitioner's appeal from the award of costs, because that decision was favorable to petitioner. Nor, however, did its

STATEMENT

1. This case involves a claim by petitioner that there are public rights-of-way crossing Fort Wainwright, Alaska, a military reservation located east of Fairbanks. In Revised Statutes 2477 (1875) (hereinafter R.S. 2477), a former provision of federal law previously codified at 43 U.S.C. 932 (1970) and repealed in

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substitute decision favorable to the government address petitioner's appeal from the award of costs.

After the court issued its substitute decision on September 20, 1996, petitioner filed a petition for rehearing on November 5, 1996 (46 days later), bearing both docket numbers, requesting that the court address the costs appeal as well, but not seeking reconsideration of the court of appeals' merits decision. In an order issued on October 8, 1997, bearing the docket numbers of both appeals, the court dismissed petitioner's costs appeal for lack of appellate jurisdiction. Pet. App. 63a. The court of appeals did not issue the mandate on the consolidated appeals until October 16, 1997, after it denied petitioner's petition for rehearing. It appears, therefore, that the court of appeals may have treated petitioner's petition for rehearing as a petition for rehearing of the panel's decision on the merits (which had been consolidated with the costs appeal).

There is a question, however, whether petitioner's petition for rehearing was timely, for it was filed with the Clerk of the Ninth Circuit on the 46th day after issuance of the court's substitute decision, one day out of time under Federal Rule of Appellate Procedure 40(a). Under this Court's Rule 13.3, "if a petition for rehearing is *timely* filed in the lower court by any party, the time to file the petition for a writ of certiorari * * * runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment." (Emphasis added.) Because petitioner's petition for rehearing may not have been timely filed, there is a question whether the petition for a writ of certiorari is timely. See generally *Missouri* v. *Jenkins*, 495 U.S. 33, 47-50 (1990).

1976 subject to a savings provision in the Federal Land Policy Management Act of 1976, 43 U.S.C. 1701, Congress granted "[t]he right of way for construction of highways over public land, not reserved for public uses." Pursuant to R.S. 2477, lands on which "highways" had been constructed before their segregation from the public domain or reservation for specific federal uses are deemed to be encumbered by public rights-of-way.

In the 1970s, petitioner acquired several adjoining parcels located to the east of (but not immediately adjacent to) Fort Wainwright. See Gov't Reh'g Pet. Tab B. The Fort was established by the United States beginning in 1937 through a series of Executive Orders, Public Land Orders and condemnations and purchases of private land. Those land orders and acquisition actions were made "subject to valid existing rights." Pet. App. 37a.

Petitioner's property cannot be reached directly from Fairbanks by public roads. The southern boundary of his property is the north bank of the Chena River; although there is a public highway along the south bank of the river, there is no bridge across the Chena in the vicinity of petitioner's property. Pet. App. 36a. A portion of Fort Wainwright lies between Fairbanks and petitioner's property, and petitioner's property may currently be reached from Fairbanks only by using roads that traverse Fort Wainwright. One can reach petitioner's property from Fairbanks by entering the western end of Fort Wainwright on Trainer Gate Road (also called Trainer Road), then continuing east inside the Fort until Trainer Gate Road intersects with River Road (previously called Tank Road), and then driving on River Road until it intersects with the beginning of Homestead Road, at

the eastern end of Fort Wainwright. Homestead Road then continues east beyond the Fort to petitioner's property and beyond, crossing Columbia Slough. Gov't C.A. Br. 4-5; Gov't Reh'g Pet. Tab B.

The Army regulates the use of the roads on Fort Wainwright. The Army has placed restrictions on access to the roads on the Fort by requiring the use of civilian decals on vehicles belonging to those who own parcels of land in the area to the east of the Fort. Those decals are intended to allow landholders east of the Fort to have ready motor vehicle access to their property on the roads through the installation. The Army also issues daily passes to visitors requiring motor vehicle entry onto the Fort. Gov't C.A. Br. 6-7.[2]

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[2] Petitioner has a history of violations of the Army's regulations governing use of the roads on the Fort, both before and after the initiation of this lawsuit, and at times he has been barred from use of the roads as a result of those violations. See C.A. Supp. E.R. Tab EG (reproducing U.S. Exh. EG, which summarizes the government's exhibits relating to petitioner's violations of both Army regulations and Alaska law). For example, in June 1981, petitioner was ordered not to reenter or be found within Fort Wainwright for a period of one year after the Army found that he had refused to comply with the directions of military police officials, assaulted a military policeman while the policeman was performing his duties, deliberately rammed a military vehicle with a truck, and violated post traffic regulations. *Id.* at 6-7. The Army nonetheless permitted petitioner to use installation roads with an Army escort and along a designated route, in light of petitioner's use of his parcel east of Fort Wainwright. *Id.* at 7. Petitioner violated the limited access order at least twice. *Ibid.* At the time that the district court made its findings of fact in this case, petitioner was barred from Fort Wainwright. Pet. App. 36a.

2. Petitioner contends that there is a public right-of-way through the Fort on a route consisting of portions of Trainer Gate Road, River Road, and Homestead Road, based on the alleged existence of a public highway between his property and Fairbanks before the establishment of Fort Wainwright, and that he therefore does not need the Army's permission to travel on those roads through the Fort. Pet. App. 11a. In 1986, petitioner filed an amended complaint alleging that several roads within the military reservation "came into existence as a public road or roads pursuant to the provisions of 43 USC § 932 [*i.e.*, R.S. 2477]." C.A. E.R. Tab 9, at 3. Petitioner claimed entitlement under the Quiet Title Act (QTA), 28 U.S.C. 2409a, "to a determination of the property rights of the various parties, including the State of Alaska and the public, of the hereinbefore described public road and/or roads." C.A. E.R. Tab 9, at 6.

The district court initially determined that petitioner's action was barred by the QTA's 12-year statute of limitations, 28 U.S.C. 2409a(g), see Pet. App. 51a-52a, but the court of appeals reversed and remanded for further proceedings, *id.* at 49a-60a. On remand, the district court rejected petitioner's claims on the merits after a five-day trial at which the court considered expert testimony, maps, aerial photographs, and documents concerning the existence and condition of roads and trails and the property status of the relevant lands dating back to the early 1900s. See Pet. App. 35a-48a.

The district court found that "[t]he Trainer Road/River Road/Homestead Road route does not correspond to routes which [petitioner] claims pre-dated the creation of Fort Wainwright." Pet. App. 36a. The district court also found that petitioner's predecessor

in interest, George Nissen, who homesteaded petitioner's property before the creation of Fort Wainwright, had not used an overland route to transport his crops to Fairbanks, but rather had used the Chena River for that purpose. *Id.* at 39a, 41a. Although the district court noted that a road called Wiest Road existed before the establishment of Fort Wainwright, it found that Wiest Road terminated in what is now the Fort, that it never reached petitioner's property, that it had long ago fallen into disuse and does not correspond to current roads, and that there had never been a road susceptible of wagon or motor vehicle use connecting petitioner's property and Wiest Road. *Id.* at 37a-38a, 40a. The court further found that, although "[a] trail and foot bridge * * * were built on land that was at one time part of Nissen's homestead[,] [they] do not constitute an RS 2477 right-of-way extension from the Wiest homestead to Nissen's homestead." *Id.* at 40a. In sum, the court found that petitioner "failed to prove the existence of any RS 2477 right-of-way or other right-of-way across Fort Wainwright which either alone or in combination with other rights-of-way provide access to [petitioner's] property east of Fort Wainwright." *Id.* at 48a. The court also concluded again that petitioner's action was barred by the statute of limitations. See *ibid.*

3. The court of appeals initially reversed, concluding that petitioner had shown the existence of a right-of-way before the establishment of Fort Wainwright. Pet. App. 1a-32a; see *id.* at 31a. The court rejected as irrelevant what it perceived to be the premise of the district court's decision, namely that "no road broad enough to accommodate a wagon cut across present day Fort Wainwright before the

surrounding land was validly withdrawn from the public domain." *Id.* at 19a. First, the court concluded, the district court had erred in finding that petitioner's predecessor in interest, Nissen, had used the Chena River to transport his crops to Fairbanks. *Id.* at 19a-20a. Second, the court held that the use of a wagon was not necessary to establish the existence of an R.S. 2477 right-of-way, and that "[a]s a legal matter, the barest foot trail may qualify for RS 2477 status. The condition of the 'highway'—whether paved or wagon-worthy, or simply a 'minor footpath'—is irrelevant if the claimant can show that the right of way was used no matter for what purpose." *Id.* at 20a. The court stressed that "conditions in Alaska present unique questions * * * [d]ue to its geography, its weather, and its sparse and scattered population" (*id.* at 13a); and that, under its reading of Alaska law concerning proof of the existence of an R.S. 2477 right-of-way, "as long as the termini of the right of way are fixed * * * , to establish public right of way the route in between need not be absolutely fixed (as it might be in other settings)" (*id.* at 14a). According to the court of appeals, "[r]ight of access is the issue, not the route" (*ibid.*), and "[w]hat matters is that there was travel between two definite points" (*id.* at 21a).

The court of appeals noted that the district court had found that Nissen used Wiest Road to travel to Fairbanks; it also found evidence of "a footbridge on Nissen's property suggesting a foot trail leading west to Fairbanks." Pet. App. 23a. Thus, the court concluded, "[a]ll the evidence points to the existence of a publicly used land route between the Nissen homestead and town" before the establishment of Fort Wainwright. *Id.* at 24a. And although the court acknowledged that not "every segment of the trail

qualified for RS 2477 status, either because a homesteading claim clearly displaced that portion of the claimed RS 2477 right of way, or because there might be homesteading rights that would trump an RS 2477 claim," it nonetheless rejected the district court's finding that "no RS 2477 [right-of-way] existed across present-day Fort Wainwright." *Id.* at 25a-26a.[3]

Finally, the court of appeals rejected the district court's conclusion that petitioner's claim was barred by the QTA's statute of limitations. Pet. App. 28a-31a. Although the district court had found that a section of Wiest Road had long been obstructed by a landfill on Fort Wainwright, which should have alerted petitioner or his predecessor in interest to the United States' claim to absolute control of that part of the land and thereby started the limitation period running, see *id.* at 38a, the court of appeals was of the view that the Army's obstruction of Wiest Road was irrelevant because "[o]ne continuous route" across Fort Wainwright exists at the present, *id.* at 30a. Thus, the court of appeals stated, "whatever obstruction to the historical route [the] landfill represents, it does not in fact obstruct the modern

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[3] The court of appeals noted that petitioner had offered "a number of common law theories to support his position that the Army took land burdened by preexisting rights." Pet. App. 26a. Petitioner, it stressed, had argued both that an R.S. 2477 right-of-way existed across Fort Wainwright and also that a "public prescriptive easement" existed before 1937. *Ibid.* The court also relied on case law involving *private* easements, and noted that under Alaska law, "[t]he fact that the easement is shared does not defeat [such a] claim." *Id.* at 27a-28a. Based on its review of the record, the court found that "the trail roughly following the river" was passable year-round and that "at the very least an easement by prescription took hold." *Id.* at 28a.

right of way across the base[,]" and "[o]nly when present day patterns of travel across the base are interfered with is it proper to charge individuals with the knowledge of the government's claim over that route." *Ibid.*[4]

4. a. The government filed a petition for rehearing, arguing that the panel had erroneously adopted unprecedented, relaxed standards for the establishment of R.S. 2477 rights-of-way and prescriptive easements, which standards would fundamentally hinder the ability of landowners to know that such encumbrances exist on their property and to manage their property accordingly. The government also argued (a) that petitioner, as a private person without any property interest in the asserted public highway right-of-way across Fort Wainwright, has no cause of action under the Quiet Title Act (QTA), 28 U.S.C. 2409a, to quiet title to the alleged public right-of-way; (b) that a proponent of an R.S. 2477 right-of-way may not establish the existence of a right-of-way merely by showing that there was opportunistic travel along unknown routes across public domain land between fixed termini, without proving that a continuous highway had existed between those termini; and (c) that petitioner had not established any private prescriptive easement crossing Fort Wainwright. See Gov't C.A. Reh'g Pet. 5-15.

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[4] The government also argued on appeal that, even if petitioner had established the existence of a public highway right-of-way across Fort Wainwright, the Army's requirement of civilian decals was nonetheless a reasonable regulation of that right-of-way. See Gov't C.A. Br. 13-15. The court of appeals did not address that argument.

b. After a second oral argument, the panel withdrew its prior opinion and substituted in its place an opinion affirming the district court's judgment. Pet. App. 3a-4a. In its substitute opinion, the court "agree[d] with the district court that [petitioner] has not sustained his burden to factually establish a continuous R.S. 2477 route or a right-of-way under Alaska common law." *Id.* at 4a. Because it rejected petitioner's claim on the merits, the court of appeals declined to address the issue of the statute of limitations. *Ibid.*

ARGUMENT

Petitioner contends that the court of appeals erred in concluding that the existence of a wagon-quality road was necessary to establish a public highway right-of-way before the withdrawal of public lands on Fort Wainwright, and that the court of appeals' decision on that basis conflicts with decisions of the Alaska Supreme Court. The court of appeals did not, however, base its decision on rehearing on the existence *vel non* of a wagon-quality road, but rather concluded that petitioner had failed to establish any continuous route crossing land that is presently on Fort Wainwright, such that a pre-existing public highway right-of-way should be recognized. That fact-bound conclusion is fully supported by the record, and raises no important issue of federal law warranting this Court's review. Moreover, petitioner, as a private party, may not invoke the QTA to quiet title in a public right-of-way, and any such claim by petitioner is in any event barred by the QTA's statute of limitations. Further review is therefore not warranted.

1. a. Petitioner contends (Pet. 10) that the lower courts erred in requiring him to prove a "wagon road" to his property, following "an exact route and location," in order to establish the existence of a public highway predating Fort Wainwright. The lower courts, however, based their decision on the absence of a showing that there was *any* continuous route across the relevant land predating Fort Wainwright, whether footpath or wagon road. Thus, petitioner's argument that the lower courts erred in ruling that the existence of a footpath would be insufficient to establish an R.S. 2477 public highway is not presented by this case.[5]

For the same reason, petitioner's contention that the decision below conflicts with the Alaska Supreme Court's decision in *Fitzgerald* v. *Puddicombe*, 918 P.2d 1017 (1996) (reproduced at Pet. App. 64a-75a), is without merit. Although the Alaska Supreme Court stated in that case (relying in part on the now-withdrawn opinion of the court below) that "even a rudimentary trail can qualify" as a public highway

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[5] Petitioner argues in particular that the district court improperly required a showing of a wagon road to establish an R.S. 2477 right-of-way (Pet. 10), but it is far from clear that the district court enunciated such a requirement. The district court, rather, rejected petitioner's own speculation that Nissen must have established a right-of-way on Homestead Road in order to take his produce by wagon to Fairbanks from his property. The district court noted both the absence of a bridge to cross a large slough between Nissen's and Wiest's homesteads (Pet. App. 39a), and the fact that "[i]f a trail or road had existed to Nissen's homestead in 1911, it is unlikely that the section line calls of the survey * * * would have missed it" (*id.* at 40a). Petitioner did not challenge either of those factual findings as clearly erroneous on appeal.

under R.S. 2477, see 918 P.2d at 1020,[6] it did not express doubt that an actual trail between two termini must have existed, and the evidence in that case established that at least one "well-defined trail" following an "established route" existed at the relevant time, *ibid.* In *Fitzgerald*, the court determined that, in fact, there had been trails established at least roughly following the route of the right-of-way claimed in that case. *Id.* at 1021. Here, the court of appeals held that petitioner had not factually established the necessary "continuous route" to prove the existence of an R.S. 2477 right-of-way. Nothing in *Fitzgerald* indicates that the Alaska Supreme Court disagrees with the court of appeals' decision in this case that a plaintiff claiming the existence of an R.S. 2477 right-of-way has the burden to establish the existence of a continuous route that was created when the land was in the public domain.

Although the Alaska Supreme Court stated in *Fitzgerald* that an R.S. 2477 route must run between two "definite termini," 918 P.2d at 1020, that court has never stated that the proponent of a right-of-way need *only* show that there was opportunistic travel along

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[6] The *Fitzgerald* court also cited *Dillingham Commercial Co.* v. *City of Dillingham*, 705 P.2d 410 (Alaska 1985), for the proposition that "even a rudimentary trail can qualify," 918 P.2d at 1020, but the *Dillingham* case does not stand for that proposition. In that case, the evidence established that a trail had evolved into a "road * * * used by the public to haul freight to and from the beach." 705 P.2d at 414. Thus, other than *Fitzgerald*, the only authority for the proposition that a footpath is sufficient to establish an R.S. 2477 right-of-way is the vacated decision of the court of appeals in this case. Now that that decision has been superseded, the Alaska Supreme Court may reconsider its reliance on it in the future.

unknown routes between two termini, without also showing the creation of a continuous route between those termini while the land was in the public domain. The existence of definite termini is a necessary but not sufficient condition for establishment of an R.S. 2477 right-of-way. And although the Alaska Supreme Court also stated in *Fitzgerald*—relying on the vacated decision of the court of appeals in this case—that "it is not necessary * * * that the precise path of the trail be proven," 918 P.2d at 1021 (citation omitted), that language was unnecessary to the decision in *Fitzgerald*, in which clear trail paths were proven. It is uncertain, moreover, that the Alaska Supreme Court would adhere to that dictum in a future case, now that the decision on which it relied for that proposition has been vacated.

b. The record fully supports the conclusion that no continuous route—even a definite footpath—had been established across public domain lands where the Army subsequently constructed either Homestead Road (the eastern portion of petitioner's claimed right-of-way) or Trainer Road (the western portion of his claimed right-of-way). See Gov't C.A. Br. 23-30, 43; cf. *Adams* v. *United States*, 3 F.3d 1254, 1258 (9th Cir. 1993) (upholding determination that no right-of-way existed where testimony showed that "whatever road existed [in the past], the [present] road is no longer in the same location as that historical road"). While it was undisputed that petitioner's predecessor in interest, George Nissen, occasionally traveled overland between his homestead and Fairbanks, there was no evidence at trial of any continuous route on which he had traveled, much less a continuous route that coincides with the right-of-way claimed by petitioner.

The only documentary evidence of roads or trails in that area when a public right-of-way would likely have been created was a 1911 survey prepared by the General Land Office, but that survey identified no roads or trails between Nissen's homestead and that of Wiest, Nissen's nearest neighbor one mile to the west. See Gov't C.A. Supp. E.R. Tab AH-1; Gov't C.A. Br. 23. Petitioner's own witness Robert Buzby—an 80-year old man who stated that he had traveled extensively throughout the area—testified that there was no road or trail between Wiest's and Nissen's homesteads, "[j]ust open country." See *id.* at 24. And expert witnesses for both parties testified that aerial photographs taken immediately after the establishment of Fort Wainwright showed no road or trail in the area. See *id.* at 25 (noting that petitioner's expert "couldn't identify" Homestead Road in 1938 aerial photographs); Gov't C.A. Supp. E.R. Tab F. In sum, petitioner failed to carry his burden of persuasion that a continuous route had been established between his property and the western end of Fort Wainwright before the Fort was established. See also *Andrus* v. *Charlestone Stone Prods. Co.*, 436 U.S. 604, 617 (1978) (noting that doubts about the availability of a federal grant in particular circumstances "are resolved for the [g]overnment") (citation omitted); *California ex rel. State Lands Comm'n* v. *United States*, 457 U.S. 273, 287 (1982) ("federal grants are to be construed strictly in favor of the United States").[7]

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[7] There also is no merit to petitioner's suggestion (Pet. i, 11-12) that this Court's review is warranted by the fact that the court of appeals withdrew a lengthy opinion and substituted for it a short opinion. After a second oral argument before the panel, the court of appeals correctly held that petitioner had "not sustained his burden to factually establish a continuous

2. Review by this Court also is unwarranted because there was no statutory authorization for the courts below to entertain petitioner's claims of public rights-of-way across Fort Wainwright. The QTA provides a limited waiver of federal sovereign immunity to permit the initiation of a civil action "to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. 2409a(a). The QTA requires that "[t]he complaint shall set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, [and] the circumstances under which it was acquired." 28 U.S.C. 2409a(d). Congress thus permitted challenges to the United States' claim of title to real property only by parties who themselves arguably have a property interest in that same property.

Petitioner was not entitled to bring a suit against the United States under the QTA to quiet title to alleged public roads because he has no property interest in public roads. As the Tenth Circuit stated in *Kinscherff* v. *United States*, 586 F.2d 159, 160-161 (1978), "[m]embers of the public as such do not have a 'title' in public roads. To hold otherwise would indicate some degree of ownership as an easement. * * * [T]he 'interest' plaintiffs seek to assert as part of the public is not of such a nature to enable them to bring a suit to quiet title."[8] Whereas governmental entities

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R.S. 2477 route." Pet. App. 4a. That determination was sufficient to dispose of the matter presented.

[8] Although the Tenth Circuit has held that an individual may use the QTA to assert claims of *private* easements across federal property, see *Kinscherff*, 586 F.2d at 161, petitioner's amended complaint claimed only *public* R.S. 2477 rights-of-way across Fort Wainwright. See C.A. E.R. Tab 9. Nor does peti-

might have a cause of action against the United States under the QTA to quiet title in R.S. 2477 public rights-of-way, private persons such as petitioner, who claim only the same benefit to public rights-of-way as that allegedly shared by all members of the general public, do not have a claim to a "right, title, or interest" of the sort necessary to invoke the QTA's mechanism for suits against the United States.

Petitioner's amended complaint claimed certain roads as public highways under R.S. 2477, and invoked the QTA to obtain "a determination of property rights of the various parties, including the State of Alaska and the public, of the hereinbefore described public road." C.A. E.R. Tab 9, at 1-2, 6. The State and "the public" are not parties to this lawsuit, however, and the QTA does not authorize an individual to sue the United States to determine a State's property rights in alleged public roads. Accordingly, the court of appeals' judgment was correct because the QTA provided no basis for a judicial decision on petitioner's claims.

3. Finally, review should be denied because petitioner's claim in any event is barred by the QTA's statute of limitations, 28 U.S.C. 2409a(g). That provision requires a plaintiff under the QTA to bring suit within 12 years after his claim accrues, defined as the date on which the plaintiff or his predecessor in interest knows, or should know, of the United States' claim to the land at issue. *Ibid.* Since this action was brought in 1986 (see Pet. App. 29a), any claim that accrued before 1974 is barred.

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tioner present in his certiorari petition any question concerning the existence of a private easement. See Pet. i, 7-13.

When the panel below initially reversed the district court, it relied heavily on the fact that Wiest Road was sometimes used by homesteaders in the area, including Nissen, to reach Fairbanks. Pet. App. 23a. Thus, if petitioner has a claim to a right-of-way, that claim must rest in large part on the existence of Wiest Road (even though Wiest Road never reached all the way to the land that is now his property). The district court found, however, that even if Wiest Road ever was an R.S. 2477 right-of-way, any claim on that basis was barred by the statute of limitations because the Army obstructed Wiest Road by the Fort Wainwright sanitary landfill before 1974 and continuously thereafter. *Id.* at 38a. Any attempt by petitioner or his predecessor in interest to use the part of the alleged right-of-way that corresponded to Wiest Road should have led him to realize that the Army claimed that land and was preventing access to it by others. Cf. *Park County, Montana* v. *United States*, 626 F.2d 718 (9th Cir. 1980) (sign and rock barrier alerting public that they were entering national forest where motor vehicles were prohibited constituted notice sufficient to apprise reasonable person of United States' claim), cert. denied, 449 U.S. 1112 (1981). Accordingly, petitioner's claim is barred by 28 U.S.C. 2409a(g).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1998